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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/650,657
Filing Date: August 28, 2003
Appellant(s): FERLITSCH, ANDREW RODNEY

Gerald Maliszewski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/1/2007 appealing from the Office action

mailed 7/12/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: The 35 U.S.C. 112 first paragraph rejection of claims 1 and 25 has been withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,985,944	Aggarwal	1-2006
6,170,009	Mandal et al.	1-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-47 are rejected under 35 U.S.C. 102(e) as being unpatentable over Aggarwal (U.S. Patent 6,985,944 B2) in view of Mandal et al. ('Mandal' hereinafter) (US Patent 6,170,009 B1).

With respect to claim 1 and similar claim 25, Aggarwal discloses in a system of devices, a policy-driven method for querying, the method comprising:

'accepting a query, from a client, directed to a device' as querying the state of a device (col. 1, line 64-66) 'sending the query to an agent representing the device, using a method responsive to the selected query policy' as obtaining information from the agent (col. 8, line 50 to col. 9, line 14). Information from the agent about a managed device object is obtained (col. 8 line 61-67 and figure 10).

Aggarwal does not specifically disclose selecting a query policy and establishing a plurality of device communication query policies, where each query policy is cross-referenced to methods for communicating a query to a device.

Mandal, however, discloses 'selecting a query policy' as the user inputs commands into the GUI to specify a high level policy (col. 3, lines 51-66).

'establishing a plurality of device communication query policies, where each query policy is cross-referenced to methods for communicating a query to a device' as creating a policy for controlling and communicating with devices (col. 5 line 45-col. 6 line 18, col. 4 line 30-44, and figures 2 , 4, and 8).

It would have been obvious to one of ordinary skill in the data processing art at the time of the present invention to combine the teachings of the cited references because selecting a query policy of Mandal, would have provided Aggarwal's system with a mechanism to specify a high-level policy for monitoring and control of devices connected to a network (col. 1, lines 53-67).

With respect to claims 2 and 26, Aggarwal discloses 'receiving a query result from the agent' (col. 8, line 50 to col. 9, line 14).

'sending the query result to the client using a method responsive to the selected query policy' as test results (col. 4, lines 34-49).

With respect to claims 3 and 28, Aggarwal, discloses 'merging a plurality of query results in response to the selected query policy' and 'sending the merged query result to

the client' as combining responses from queries (col. 4 line 65- col. 5, line 9, and figures

2, 11A – 11B).

With respect to claims 4 and 29, Aggarwal, discloses a 'multi-mode query policy'

(col. 7, lines 25-35).

'sending a query to a plurality of agents' as getting information from the agent

(col. 8 lines 61-67).

'receiving a plurality of query results from the corresponding plurality of agents'

(col. 8 lines 61-67).

'merging the plurality of query results from the plurality of agents' (col. 8 line 61 –

col. 9, line 6).

With respect to claims 5 and 6, 30 and 31, Aggarwal discloses 'using a selection

criteria from the group including pre-configured, manual, and automatic selection

criteria' and 'static, heuristic and adaptive policies' as ICMP network monitors that may

be used (col. 7, line 13 – col. 8, line 48 and col. 24, lines 24-50).

With respect to claims 7 and 32, Aggarwal discloses 'selecting a global query

policy that is independent of the information requested in the query' (col. 14, lines 52-

60).

With respect to claims 8 and 33, these claims have been rejected for the same reasons as set forth in claim 4 above.

With respect to claims 9 and 34, Aggarwal discloses 'selecting an element-type query policy' as querying based on device type (col. 7, line 35) identifying each type of agent associated with a directed query' and 'for each agent, using the method corresponding to the identified agent type (col. 8, line 61 – col. 9).

With respect to claim 10, Aggarwal discloses 'a policy from the group including response time and reliability policies' as availability and response time (col. 8, lines 5-48 and figures 11a-12).

With respect to claims 11 and 35, these claims are rejected for the same reason as claim 10 as set forth above. Further, Aggarwal discloses 'ranking the probable time associated with each agent query result' as a trend report and predicting the number of days to hit specified thresholds (col. 20, lines 32-36 and fig. 15) 'sending the queries in a hierarchical order responsive to the probable result times' (col. 21 lines 52 – 57).

With respect to claims 12 and 36, these claims are rejected for the same reasons as set forth in claim 10 above.

With respect to claims 13 and 37, these claims are rejected for the same reasons

as set forth in claim 3 above. Furthermore, Aggarwal discloses 'selecting and accuracy policy' as identifying the actual point of failure (col. 21, lines 29-44).

With respect to claims 14 and 38, Aggarwal discloses 'a query directed to information concerning device communication port information' as port monitors (col. 8, lines 4-49) 'network information' as bandwidth utilization (col. 7, lines 43-51) 'communication checks (Ping)' as checking reachability (col. 7, lines 14-17) 'capability requests' as disk capacity determination (col. 14, lines 35-51) and 'status updates' as, for example, BGP status and updates (col. 9,10)

With respect to claims 15 and 39, Aggarwal discloses 'using a method selected from the group including spooler application programming interface (API), simple network management protocol (SNMP), printer database, proprietary protocol, Windows 2K directory service, service location protocol (SLP), print job language (PJL) USTATUS, BMLinkS queries, queries concerning an embedded device web page using hypertext transport protocol (HTTP), and other industry standard methods (col. 7, line 24-col. 8 lines 48).

With respect to claims 16 and 40, Aggarwal discloses 'using a process selected from the group including filtering query results, grouping a plurality of results into a single result, and weighing the plurality of results' (col. 23, lines 46-55).

With respect to claims 17 and 41, Aggarwal discloses 'caching device information; and, wherein receiving a query result from the agent includes receiving cached device information as the query result' as Data Gathering and Storage and Data Storage sections 4.3.2 and 4.3.2.1 respectively (columns 14-16).

With respect to claims 18 and 42, Aggarwal discloses 'accepting a query from a client selected from the group including local, remote, network-connected clients' (col. 21, lines 11-22).

With respect to claims 19 and 43, Aggarwal discloses 'an agent having a connectivity with the device selected from the group including local, remote, and network connectivity' (col. 17, lines 61-67).

With respect to claims 20 and 44, Aggarwal discloses 'a query directed to an imaging device selected from the group including a printer, fax, scanner, multifunctional peripheral (MFP), and copier devices' as printer support (col. 7, lines 66-67).

With respect to claims 21 and 45, Aggarwal discloses 'sending the query to an agent selected from the group including the device that is the subject of the query and a microprocessor-driver computer including a service in communication with the device' (col. 20, lines 43-63).

With respect to claims 22-24 and 46-47, these claims are rejected for the same reasons as claims 1-21 as set forth above. Furthermore, Aggarwal discloses 'device permanent information' (columns 9-12).

With respect to claim 25, since this claim contains the same subject matter as that of claim 1, but is a system rather than a method it is rejected for the same reasons as claim 1 as set forth above. Furthermore, Aggarwal discloses 'a client having an interface to supply a query directed to a device a manager having an interface connected to receive the query from the client and an interface to send queries' as a data gathering operation may be manually entered via an API (col. 5, line 60 – col. 6 line 5).

With respect to claim 27, Aggarwal discloses 'an interface for relaying queries' (col. 4, lines 34-49)

(10) Response to Argument

Appellant's arguments see pages 4-5 of the Brief filed 8/1/2007, with respect to claims 1 and 25 have been fully considered and are persuasive. The 35 U.S.C. 112th first paragraph rejection of claims 1 and 25 has been withdrawn.

Appellant's arguments filed in the Appeal Brief with respect to claims 1-47 under 35 U.S.C. 103(a) have been fully considered but they are not persuasive.

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Mandal teaches specifying a high-level policy (i.e. selecting a policy) that is directed towards a device (col. 3 line 52-53) and further that these commands are device-specific (i.e. the commands in a policy are device-specific and therefore cross-referenced to a specific device). Therefore, Mandal teaches *selecting* a policy. In combination with Aggarwal, Mandal's selecting of a policy would have given a way to select the appropriate policy for a specific device (i.e. Aggarwal discloses a need in col. 9 line 10-14 where it is stated "SNMP agents for different types of devices provide access to objects that are specific to the type of device...the manager needs to know the names and types of objects in the managed device" which raises the concern for accessing devices of different types). Accordingly, Mandal suggests giving Aggarwal a way to specify a query policy (i.e. network device monitors of Aggarwal; col. 7, ICMP and SNP monitors) for a specific device.

Secondly, the Appellant argues (with regards to the second prima facie requirement) on page 10 of the Brief that Aggarwal cannot be modified by Mandal because neither reference considers that groupings (policies) can be made selectable.

The Examiner disagrees because Aggarwal teaches (col. 7 lines 10-12) a list of at least some exemplary monitors (i.e. query policies) that may be supported. Here Aggarwal suggest a list (i.e. grouping) of query policies that are supported by the system and may be selected to monitor their respective devices. For example, if an ICMP network monitor is selected, it is used to check the availability of hosts. If an SNMP monitor is chosen, then devices with an SNMP agent are queried and monitored (Aggarwal at col. 8 line 50-60). Therefore, one would have been motivated to combine Mandal and Aggarwal to produce a way of specifying those network monitors from the list of network monitors and obtaining an appropriate monitor to use.

The Appellant argues on page 12 of the brief that neither Aggarwal nor Mandal describes a method (or manager) that selects a device communications query policy, which is cross-referenced to methods for communicating the query. The Examiner disagrees given the following:

The Examiner submits that Aggarwal discloses a method of distributing queries in a distributed system to monitor and gather performance data regarding devices of the system. For example, Aggarwal discloses using a Simple Network Management Protocol ("SNMP"; col. 7 line 25) to query a managed device such as a router (col. 8 line 53-55). In this instance, the SNMP (v1, v2, and v3) is a method for communicating the

query to the agent representing the router. Also in this example, it is seen that Aggarwal uses the SNMP to facilitate communication between the router (col. 8 line 53-54). Furthermore, Aggarwal teaches that a manager performs a GET (or read) to obtain information (and thus querying to obtain information regarding from the agent associated with the device (col. 8 line 65-67). Therefore, it is submitted that for Aggarwal to communicate to a router to obtain information (i.e. a query policy), a SNMP protocol (i.e. communication method) is used.

Aggarwal gives another example that teaches the claimed device communications query policy, which is cross-referenced to methods for communicating the query. Specifically, Aggarwal teaches exemplary Network Monitors (col. 7 line 13-23) to check the reachability of hosts. In this example, Aggarwal uses an ICMP network monitor that is used to check (i.e. query) the reachability of hosts by reporting packet loss and latency. The Examiner submits that the ICMP network monitor is a device communication query policy because it monitors by checking (i.e. querying) a host to see if it is reachable and further uses the ICMP protocol to access the hosts (i.e. using an ICMP query policy crossed referenced with the ICMP protocol (i.e. communication method). In other words, this method is commonly known in the art as "pinging" (i.e. sending echo request messages to a device and returning the device's IP address, if reachable, along with reported information). As pinging is a category of queries (noted by applicant in the specification at 0005), this example also teaches the query policy of claim 1.

Although Aggarwal teaches the query policies (e.g. SNMP and ICMP network monitors as described above) Aggarwal does not specifically teach selecting a query policy.

Mandal, however, teaches selecting a query policy as a user specifying a high level policy (col. 3 lines 51-66).

In the same field of endeavor, (i.e. monitoring and controlling devices using query policies), it would have been obvious to one of ordinary skill in the data processing art at the time of the present invention to combine the teachings of the cited references because Mandal's selecting policies that are device specific would have given Aggarwal the benefit of specifying a high-level policy for monitoring devices. Such a method would have been useful to Aggarwal when normal end users desire to monitor devices or when administrative users wish to view performance data (i.e. abstract of Aggarwal). In one example, Aggarwal desires a need for viewing device-specific performance data in the use of the ICMP network monitor (that checks for availability of hosts). Further Mandal would have given Aggarwal the benefit of defining their network monitors as policy objects (i.e. establishing device communication query policies, figure 4 of Mandal) that can include methods for implementing the associated policy (col. 4 line 28-29, Mandal) for the benefit of monitoring devices.

The Appellant argues (last line of page 12 of the brief to the first line on page 13) that Mandal does not make any association between a selected policy and the device adaptor. The Examiner disagrees because the policy objects 221-226 communicate to the devices of the network through the device-specific adaptors (col. 4 line 45-50)

through device Policy Programming Interface (device PPI). Therefore, the device PPI

would serve as the association between the selected policy and a given device adaptor.

The Examiner respectfully submits in light of the foregoing, the three prima facie

requirements have been established.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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